IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 18899 of 2003(Y)

PETITIONER:

JOHN GEORGE, MOULAPARAMBIL,
CANAL WARD, ALAPPUZHA.

BY ADV. SRI.K.K.SATHEESH

RESPONDENTS:
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1. **UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTERS' DIVISION, LOK NAYAK BHAWAN, NEW DELHI - 110 003.**

2. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL ADMINISTRATION (FFP.A) DEPARTMENT, THIRUVANANTHAPURAM.**

3. **THE DISTRICT COLLECTOR, ALAPPUZHA.**

BY ADV. SRI.B.N.SHIV SHANKAR, ADDL.CGSC
SRI.S.R.AJITH, ADDL.CGSC
BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08 /08 /2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO. NO.18899/2003

ORDER ON IA. NO.4899/2003 IN WPC. NO.18899/2003

DISMISSED

08.08.2007 SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE RELEVANT PORTION OF THE SSS PENSION SCHEME,1980.

EXT.P2:- COPY OF THE APPLICATION SUBMITTTED BY THE PETITIONER FOR THE GRANT OF SSS PENSION DT. 27.4.98.

EXT.P3:- COPY OF THE PKC ISSUED BY SRI.KUNJAN SUKUMARAN 25.4.98.

EXT.P4:- COPY OF THE PKC ISSUED BY SRI.S.KUMARAN EX-MP. DT. 15.7.87.

EXT.P5:- COPY OF THE COMMUNICATION NO.H3-467/98/S.R. DT. 4.8.01 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P6:- COPY OF THE NARC ISSUED BY THE SUPDT. OF SPECIAL SUB JAIL, ALAPPUZHA DT. 23.8.01.

EXT.P7:- COPY OF THE NARC ISSUED BY THE CHIEF JUDICIAL MAGISTRATE, ALLEPPEY.

EXT.P8:- COPY OF THE AFFIDAVIT SUBMITTED BY THE PETITIONER DULY ATTESTED BY THE CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA DT. 21.8.01.

EXT.P9:- COPY OF THE PKC ISSUED BY SRI,NARAYANAN RAMANKUTTY DT. 2.8.01.

EXT.P10:- COPY OF THE ORDER NO.52/40/99-FF (SZ0 dt. 26.7.99 ISSUED BY THE 1ST RESPONDENT TO SRI.NARAYANAN RAMANKUTTY.

EXT.P11:- COPY OF THE EXTRACT OF CONVICT REGISTER OF CENTRAL PRISON, TRIVANDRUM ISSUED BY THE SUPDT. OF THAT PRISON IN RESPECT OF SRI.NARAYANAN RAMANKUTTY

EXT.P12:- COPY OF THE COMMUNICATION NO.H.302692/03/D.DIS. DT. 29.3.03 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

/TRUE COPY/

P.A. TO JUDGE

T.R.RAMACHANDRAN NAIR, J.

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WP(C).No.18899 of 2003-Y.

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Dated this the 8th day of August, 2007.

J U D G M E N T

The petitioner is a freedom fighter who had participated in the Punnapra Vayalar Movement which has been recognised by the Government of India for grant of pension under the Swathantra Sainik Samman Pension Scheme. The claim of the petitioner is that pursuant to the issuance of a warrant of arrest by the Special Magistrate Court, Alappuzha in connection with case No.P.E.7/1122 ME., he had gone underground for a period of eight months from October, 1946 to June 1947. The petitioner is a recipient of Kerala Freedom Fighters Pension as per proceedings No.56375/88 dated 20.7.1988. Ext.P2 is the application submitted by the petitioner for grant of pension by the Government of India. He had produced Exts.P3 and P4 personal knowledge certificate from Sri.Kunjan Sukumaran and Sri.S.Kumaran, Ex-M.P.

2. The District Collector as per Ext.P5 had directed the petitioner to furnish various details including the copies of warrant of arrest/FIR/Judgment of the court of the relevant register, in the absence of the above non-availability of records certificate from the sub jail/central jail

etc., an affidavit duly attested by the Judicial First Class Magistrate; co-prisoners certificate issued by two freedom fighters who had undergone imprisonment for a period of more than two years and are recipients of both the Central-State pension and also the Thamrapathra.

3. In reply to the same the petitioner submitted the non-availability of records certificate issued by the Superintendent of Special Sub Jail, Alappuzha and the Chief Judicial Magistrate, Alappuzha. They are marked as Exts.P6 and P7 here. Ext.P8 is the affidavit duly attested by the Chief Judicial Magistrate, Alappuzha. He had also produced Ext.P9 the personal knowledge certificate from Sri.Narayanan Ramankutty who was a freedom fighter and had undergone imprisonment in the Central Prison, Thiruvananthapuram for a period of more than two years and also the recipient of Central-State pension and the Thamrapatra. The relevant order dated 26.7.1999 granting SSS Pension to Sri.Narayanan Ramankutty is produced as Ext.P10 and the true copy of the extract of the convict register of Central Prison, Thiruvananthapuram issued by the Superintendent of that prison in respect of Sri.Narayanan Ramankutty is produced as Ext.P11.

4. In spite of production of the above he was informed by the District Collector as per Ext.P12 that his application is rejected for non-production of required documents to prove his claim. Ext.P12 is under challenge in this writ petition.

5. The respondents have filed counter-affidavits in this case. The learned counsel for the petitioner points out that going by the requirements of the scheme Ext.P1 the documents forwarded by the petitioner are sufficient and the reply by Ext.P12 is far from satisfactory. It is also pointed out that the District Collector has not rejected any of the documents produced by the petitioner and has merely stated that they are not sufficient without discussing any of them. It is further submitted that the certificate from Sri.Narayanan Ramankutty has been accepted by this Court as an eligible one in various decisions and directions have been issued to consider the claim for grant of pension on the basis of the certificates issued by him.

6. In the counter-affidavit filed on behalf of the 2nd respondent it is not disputed that the petitioner is a recipient of pension under the Kerala Freedom Fighters Rules. For justifying the stand taken in Ext.P12, in the counter-affidavit certain defects have been pointed out. The first one is that in Ext.P3 the case number relating to the applicant is not mentioned and as regards Ext.P4 it is stated that it is not in the prescribed form. It is also stated that the jail certificates of the certifiers have not been produced to assess the eligibility of the certifiers of Exts.P3 and P4. As regards the certificate issued by Sri.Narayanan Ramankutty what is stated is that it seems "doubtful".

7. The approach made is far from satisfactory. Even though in Ext.P3 the case number is not mentioned in Ext.P4 certificate issued by

Sri.S.Kumaran, Ex-M.P., the case number is mentioned and the period during which he had remained underground pursuant to the arrest warrant is also mentioned. The statement that this is not in proper form is clearly unacceptable. The certifier has clearly stated the details about the petitioner. The State Government cannot plead ignorance of the competency of Sri.S.Kumaran, Ex-M.P., after a long period and it is unfortunate that the certificate issued by him is found to be far from satisfactory. Apart from the above, in the light of the certificate from Sri.Narayanan Ramankutty Ext.P9, and also the order Ext.P10, granting Central pension to him as well as in the light of Ext.P11, true extract of the convict register in respect of Sri.Narayanan Ramankutty, no objection could have been taken as done now. When there are clear references to the number of case, the period during which he was underground etc., in Ext.P9, it is beyond comprehension as to how the same has not been acted upon by the District Collector especially in the light of the fact that the certificate issued by him has been relied upon in other cases. In the light of Exts.P9, P10 and P11 the reasons stated for the rejection taken in the counter-affidavit as regards Exts.P3 and P4 is irrelevant also.

8. The learned counsel for the petitioner has relied upon the judgment of this Court in OP.No.36883/2001 rendered in similar circumstances by a learned Single Judge. Therein also the claim was in

relation to the Punnapra-Vayalar Struggle and similar objections were taken for not accepting the certificates. Reference was made to the certificate issued by Sri.S.Kumaran and Sri.Narayanan Ramankutty. After disclosing the details it is found in para.3 as follows:

> **"3. In the counter-affidavit, it is stated that petitioner did not produce any documentary evidence as acceptable certificate as prescribed under the SSS Scheme. No reference is made to any of the documents produced by the petitioner along with he petition. In para.3 it is stated that the abscondence certificate produced from Sri.Kunjan Sukumaran, personal knowledge certificate from Sri.Narayanan Ramankutty and the non availability of records certificate from Superintendent of Police, Alappuzha and Chief Judicial Magistrate Court, Alappuzha are not acceptable. As regards the certificate issued by Sri.Kunjan Sukumaran, it is stated that it does not show the case details of Sri.Ramakrishnan. The certificate issued by Sri.Narayanan Ramankutty also lacks the case details and vital details whether he was a proclaimed offender. However, no reference is made to the affidavit produced by the petitioner. It has been held by the Supreme Court of India in *Gurdial Singh v. Union of India* (2001(8) SCC 8) that in the matter of claim for freedom fighters' pension the standard of proof is not to be equated with the same as in the case of claim for other benefits because the very object of the scheme is to honour and to mitigate the sufferings of the freedom fighters and a liberal and not a technical approach should be adopted."**

Finally this Court was pleased to hold that, "after several years of such struggle there may be hardly any case where there is strict proof of such participation available. Moreover, petitioner has been given pension by the State Government itself will indicate the prima facie case that her father had participated in the Punnapra Vayalar Struggle." The situation herein is

identical. The petitioner has been granted pension for participation in the Punnapra-Vayalar Struggle which has been sanctioned evidently based on the real proof of the claim. This aspect has been lost sight of while issuing Ext.P12. Therefore, Ext.P12 on that score itself is unsustainable.

9. The learned counsel for the petitioner also brought my attention to the judgment of a learned Single Judge in OP.No.31822/2004. In para.3 of the judgment it was noticed that in an earlier judgment of this Court in OP.No.6944/2003 it was categorically held that Sri.Narayanan Ramankutty is an eligible certifier and his eligibility to issue the certificate cannot be disputed. Regarding the evidentiary value of such certificate it was further laid as follows:

> **"As held by this court and the Hon'ble Supreme Court in several decisions, certificates produced by freedom fighters need not be scrutinised to such minute details. Ext.P7 certifies that he was an accused in a criminal case. If the petitioner's husband was an accused in a criminal case there would certainly have been a warrant of arrest against him. Therefore, it can safely be presumed that his going underground was pursuant to an award of arrest warrant in the above said criminal case. Therefore I am satisfied that Ext.P7 is sufficient evidence to show that the petitioner's husband was a freedom fighter coming within the purview of the Freedom Fighters' Pension Scheme and that the petitioner has proved that her husband was in fact a genuine freedom fighter. Therefore as his widow the petitioner is entitled to continue to receive Freedom Fighter's Pension. Accordingly there would be a direction to the respondents to sanction Freedom Fighters' Pension to the petitioner from the date of Ext.P1."**

10. Going by the decision of the Supreme Court in *Gurdial Singh v. Union of India* (2001(8) SCC 8), the scrutiny of the evidence is not like the one in a criminal case. It was held as follows:

> **"7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."**

In the light of the above dictum also, it is clear that Ext.P12 is totally unsustainable and the same is quashed.

11. In the light of the fact that the petitioner has already been granted pension by the State Government, there will be a direction to respondents 2 and 3 to forward the application to the first respondent with due recommendation along with the documents produced by him within a

period of six weeks from the day of receipt of a copy of this judgment. The first respondent will consider the same in accordance with law on its merits within a further period of two months from the date of receipt of the documents from respondents 2 and 3. Needless to say that the same will be considered and orders will be passed in accordance with the relevant principles stated by the Apex Court that a liberal approach is needed in such cases.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-